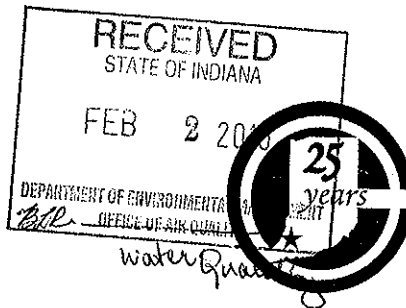


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OFFICIAL COMMENT

January 30, 2010

LSA Document #08-764 (Antidegradation)

Mary Ann Stevens

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

100 North Senate Avenue

MC 65-41

Indianapolis, IN 46204-2251

Re: Comments on LSA Document #08-764

Second Notice of Comment Period

Dear Ms. Stevens:

The Indiana Coal Council, Inc. ("ICC") submits the following comments regarding the "Development of New Rules and Amendments to Rules Concerning Antidegradation Standards and Implementation Procedures", LSA Document #08-764. The ICC is also a member of the Indiana Water Quality Coalition and incorporates their comments herein to avoid duplicity.

The ICC is a trade association representing approximately 98% of Indiana's coal production. The association was formed to foster, promote, and defend the interest of Indiana's coal producers, coal reserve holders, and other business entities related to the coal industry. All Indiana coal operators will be affected by the proposed antidegradation rules.

As written, the proposed rules lack regulatory certainty in a number of ways. Foremost, a "pollutant of concern" should be limited to a pollutant that is *regulated as a water quality standard, a water quality-based effluent limit, a technology-based effluent limit, a regulated BBC, a regulated toxic substance or regulated within a BMP*. Federal regulations are clear that states must adopt water quality criteria that protect the designated use. Federal regulations do not require that every possible substance must be regulated.

The majority of coal mine NPDES permits are general permits and should not be subject to antidegradation procedures because these discharges are de facto considered not to be a "significant lowering of water quality", or they would not be eligible for a general permit in the first place. Coal mines are required to obtain NPDES permits for their sediment basins that generally discharge into rural

drainage ditches. Due to the sediment basins, vegetative cover, and erosion control coal mine discharges into these drainage ditches are generally of higher quality than surrounding agricultural runoff.

However, IDEM has not "reviewed" the general permits as directed by the General Assembly which makes it very difficult for a general permit holder to comment on this proposal. I attempted to ascertain from member companies what the main concerns were with the current proposal, and the answers came back the same. We do not understand the rule and how it will be implemented and therefore it is impossible to comment and make suggested changes. While this is a generalization, it is clear that the rule proposal needs to be reworked and simplified so the regulated community can understand its implications and plan accordingly. We further urge IDEM to "review" the current general permits as soon as possible so a regulated entity can determine how their activities will be regulated and can comment accordingly. Delay in these determinations further confuses the regulated community and coal mine general permit holders in particular.

In communications with member companies we tried to ascertain what fiscal costs would be associated with the rule proposal. Again, assuming the current general permits (including Rule 7) will not be subject to antidegradation rules, there would not be any fiscal impact to the coal industry. When asked the follow up question, if coal mine discharges are subject to antidegradation, what would be your increased costs, a variety of scenarios were suggested. In summary, costs to the regulated community would substantially increase.

One coal mine operator that typically has large surface mines did discuss the proposed rule with an outside consultant familiar with water discharges from surface coal mines. The consultant indicated that a full antidegradation demonstration could cost as much as \$100,000. In a large surface mining area where multiple watersheds are encountered and as many as 25 different NPDES permits would be required over the life of the mine, antidegradation demonstration costs would exceed \$1M.

Additionally, one underground coal mine operator with experience in other jurisdictions indicated that costs at an underground coal mine could exceed \$250,000 for an individual NPDES permit with associated antidegradation demonstrations.

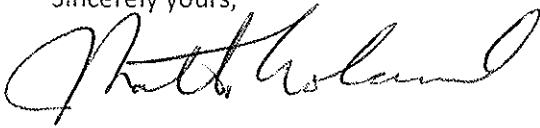
These projected costs seem exorbitant, but they are realistic. Costs would be more realistic if the rule were simplified and recognized other regulatory program review requirements for the same locations. Coal mines are regulated under IC 14-34 and the federal Surface Coal Mining and Reclamation Act where hydrological impact issues are necessarily a part of the regulatory review and ultimate permitting decisions. In fact, if IDEM recognized this for coal mining operations, it should continue the general permits for coal mines and no real new costs would be encountered by the regulated entity.

We recognize that IDEM has requested supporting fiscal impact information within 15 days or so following the deadline for these comments. For these reasons, we request that the agency review the Rule 7 general permit requirements for coal mines and respond to the ICC if the agency believes that

general permits for coal mines are no longer warranted. While we disagree with any such assessment we then could potentially provide the agency with a more in depth fiscal analysis with supporting data.

In summary, we believe the rule is more complex than required by federal law and certainly more complex than other states where USEPA has approved antidegradation regulatory programs. The rule needs extensive "simplification" to provide guidance and clarity to the regulated community. Further, it is difficult to comment on the current rule proposal because IDEM has not made determinations concerning the various general permits under current law. We urge IDEM to complete the review of all general permits and indicate what status they would have following a final antidegradation rule.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Nathan Noland". The signature is fluid and cursive, with the first name "J. Nathan" being more prominent than the last name "Noland".

J. Nathan Noland

